OIPE JC42
FEB 17 2004
PATENT & TRADEMARK OFFICE

COMBINED DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION

DECLARATION:

As the below named inventors, we hereby declare that:

Our residences, post office addresses and citizenship are stated below next to our names.

We believe we are the original, first and sole inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled SPINAL IMPLANT, the specification of which was filed on October 7, 2003, Serial No. 10/680,982, United States Patent application Attorney docket number 49272.830011.US0.

The persons named as inventors in this application are Michael Fulton, and Jeffrey Thramann.

We hereby state that we have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56. If this application is identified above as a continuation-in-part application above, we acknowledge the duty to disclose to the Office all information known to us to be material to patentability as defined in §1.56 which became available between the filing date of the prior application and the filing date of this continuation-in-part application.

No prior foreign application for patent or inventor's certificate has been filed.

Priority claim is made.

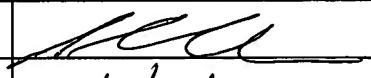
Application No.	Filing Date	Status

POWER OF ATTORNEY:

As named a inventor, we hereby appoint Brian P. Kinnear, Reg. No. 43,717, Francis A. Sirr, Reg. No. 17,265, Chris Kulish, Reg. No. 33,056, Trent Baker, Reg. No. 46,534, L. Grant Foster, Reg. No. 33,236, Christopher Wight, Reg. No. 31,680, James R. Farmer, Reg. No. 47,555, D. Delos Larson, Reg. No. 46,118 to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. Send all correspondence to: Brian Kinnear, HOLLAND & HART LLP, P.O. Box 8749, Denver, Colorado 80201, and direct telephone calls to Brian Kinnear, telephone number (303) 295-8170.

We hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Inventor's Full Name:	Michael Fulton
Inventor's Signature:	
Date:	2/3/04
Residence: (City, State and/or Country)	2908 Marble Lane Superior, CO 80024
Citizenship:	USA
Post Address Office:	same as above

Inventor's Full Name:	Jeffrey Thramann
Inventor's Signature:	
Date:	2/11/04
Residence: (City, State and/or Country)	8580 Strawberry Lane Longmont, CO 80503
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§ 1.56 duty to disclose in formation material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or ssthe duty of disclosure was violated through bad faith or intentional misconduct. The office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Each other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(4) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent or inventor.